

THE HONORABLE JAMAL N. WHITEHEAD

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

IN RE: AMAZON RETURN POLICY
LITIGATION

CASE NO. 2:23-CV-01372-JNW

STIPULATED PROTECTIVE ORDER

NOTE ON MOTION CALENDAR:

November 1, 2024

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

2. “CONFIDENTIAL” MATERIAL

“Confidential” material shall include the following documents and tangible things

1 produced or otherwise exchanged: that contain non- public business information that is treated
 2 confidentially by the producing party in the ordinary course of business and whose disclosure may
 3 cause the producing party to be commercially disadvantaged or prejudiced. Some examples of
 4 “Confidential” materials are: trade secrets, technical information; technical practices; technical
 5 methods; know-how; product research; product design; product formulas; product testing; product
 6 development; product manufacturing; minutes of confidential board meetings; minutes of
 7 confidential officer meetings; minutes of confidential employee meetings; non-public pricing;
 8 finances; the amount of taxes paid; the amount of sales; the amount of Amazon’s profits; the
 9 amount of Amazon’s costs; licensing agreements; the substance of licensing negotiations;
 10 customer lists; market projections; market forecasts; strategy plans; marketing strategies; an
 11 individual’s social-security number, taxpayer-identification number, or birth date, the name of an
 12 individual known to be a minor, or a financial-account number; Amazon account holders’
 13 personally identifiable information, including but not limited to email addresses, phone numbers
 14 and payment account information; and any personally identifiable information relating to minors.

15 3. HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” MATERIAL

16 “Highly Confidential – Attorneys’ Eyes Only” material is extremely sensitive
 17 “Confidential Material,” disclosure of which to another Party or Non-Party would create a
 18 substantial risk of serious harm that could not be avoided by less restrictive means.

19 4. SCOPE

20 The protections conferred by this agreement cover not only confidential and highly
 21 confidential-attorneys’ eyes only material, but also (1) any information copied or extracted from
 22 confidential or highly confidential-attorneys’ eyes only material; (2) all copies, excerpts,
 23 summaries, or compilations of confidential or highly confidential-attorneys’ eyes only material;
 24 and (3) any testimony, conversations, or presentations by parties or their counsel that might reveal
 25 confidential or highly confidential-attorneys’ eyes only material.

26 The protections conferred by this agreement do not cover information that is in the public

1 domain or becomes part of the public domain through trial or another proper means of disclosure.

2 5. ACCESS TO AND USE OF CONFIDENTIAL AND HIGHLY CONFIDENTIAL-
3 ATTORNEYS' EYES ONLY MATERIAL

4 5.1 Basic Principles. A receiving party may use confidential and/or highly confidential-
5 attorneys' eyes only material that is disclosed or produced by another party or by a non-party in
6 connection with this case only for prosecuting, defending, or attempting to settle this litigation.
7 Confidential and/or highly confidential-attorneys' eyes only material may be disclosed only to the
8 categories of persons and under the conditions described in this agreement. Confidential and/or
9 highly confidential-attorneys' eyes only material must be stored and maintained by a receiving
10 party at a location and in a secure manner that ensures that access is limited to the persons
11 authorized under this agreement.

12 5.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered
13 by the court or permitted in writing by the designating party, a receiving party may disclose any
14 confidential material only to:

15 (a) the receiving party's counsel of record in this action, as well as employees
16 of counsel to whom it is reasonably necessary to disclose the information for this litigation;

17 (b) the officers, directors, and employees (including in house counsel) of the
18 receiving party to whom disclosure is reasonably necessary for this litigation;

19 (c) experts and consultants to whom disclosure is reasonably necessary for this
20 litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

21 (d) the court, court personnel, and court reporters and their staff;

22 (e) copy or imaging services retained by counsel to assist in the duplication of
23 confidential material, provided that counsel for the party retaining the copy or imaging service
24 instructs the service not to disclose any confidential material to third parties and to immediately
25 return all originals and copies of any confidential material;

26 (f) during their depositions, witnesses in the action to whom disclosure is

1 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound”
2 (Exhibit A), unless otherwise agreed by the designating party or ordered by the court. Pages of
3 transcribed deposition testimony or exhibits to depositions that reveal confidential material must
4 be separately bound by the court reporter and may not be disclosed to anyone except as permitted
5 under this agreement;

6 (g) the author or recipient of a document containing the information or a current
7 of former employee of the producing party who otherwise had custody or control of the document
8 or had reason to know the information.

9 5.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
10 Information or Items. Unless otherwise ordered by the court or permitted in writing by the
11 designating party, a receiving party may disclose any information or item designated “HIGHLY
12 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

13 (a) the receiving party’s outside counsel of record in this action, as well as
14 employees of said outside counsel of record to whom it is reasonably necessary to disclose the
15 information for this litigation and who have signed the “Acknowledgment and Agreement to Be
16 Bound” that is attached hereto as Exhibit A;

17 (b) in house counsel of the receiving party to whom disclosure is reasonably
18 necessary for this litigation;

19 (c) the court, court personnel, and court reporters and their staff;

20 (d) during their depositions, witnesses in the action to whom disclosure is
21 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound”
22 (Exhibit A), unless otherwise agreed by the designating party or ordered by the court. Pages of
23 transcribed deposition testimony or exhibits to depositions that reveal highly confidential –
24 attorneys’ eyes only material must be separately bound by the court reporter and may not be
25 disclosed to anyone except as permitted under this agreement;

26 (e) professional jury or trial consultants, experts, and professional vendors to

1 whom disclosure is reasonably necessary for this litigation and who have signed the
2 “Acknowledgment and Agreement to Be Bound” (Exhibit A); and

3 (f) the author or recipient of a document containing the information or a current
4 or former employee of the producing party who otherwise had custody or control of the document
5 or had reason to know the information.

6 5.4 Filing Confidential or Highly Confidential-Attorneys’ Eyes Only Material. Before
7 filing confidential or highly confidential – attorneys’ eyes only or discussing or referencing this
8 material in court filings, the filing party shall confer with the designating party, in accordance with
9 Local Civil Rule 5(g)(3)(A), to determine whether the designating party will remove the
10 confidential designation, whether the document can be redacted, or whether a motion to seal or
11 stipulation and proposed order is warranted. During the meet and confer process, the designating
12 party must identify the basis for sealing the specific confidential information at issue, and the filing
13 party shall include this basis in its motion to seal, along with any objection to sealing the
14 information at issue. Local Civil Rule 5(g) sets forth the procedures that must be followed and the
15 standards that will be applied when a party seeks permission from the court to file material under
16 seal. A party who seeks to maintain the confidentiality of its information must satisfy the
17 requirements of Local Civil Rule 5(g)(3)(B), even if it is not the party filing the motion to seal.
18 Failure to satisfy this requirement will result in the motion to seal being denied, in accordance with
19 the strong presumption of public access to the Court’s files.

20 6. DESIGNATING PROTECTED MATERIAL

21 6.1 Exercise of Restraint and Care in Designating Material for Protection. Each party
22 or non-party that designates information or items for protection under this agreement must take
23 care to limit any such designation to specific material that qualifies under the appropriate
24 standards. The designating party must designate for protection only those parts of material,
25 documents, items, or oral or written communications that qualify, so that other portions of the
26 material, documents, items, or communications for which protection is not warranted are not swept

1 unjustifiably within the ambit of this agreement.

2 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
3 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to
4 unnecessarily encumber or delay the case development process or to impose unnecessary expenses
5 and burdens on other parties) expose the designating party to sanctions.

6 If it comes to a designating party's attention that information or items that it designated for
7 protection do not qualify for protection, the designating party must promptly notify all other parties
8 that it is withdrawing the mistaken designation.

9 6.2 Manner and Timing of Designations. Except as otherwise provided in this
10 agreement (see, e.g., second paragraph of section 7.2(b) below), or as otherwise stipulated or
11 ordered, disclosure or discovery material that qualifies for protection under this agreement must
12 be clearly so designated before or when the material is disclosed or produced.

13 (a) Information in documentary form: (e.g., paper or electronic documents and
14 deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings),
15 the designating party must affix the word "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL –
16 ATTORNEYS' EYES ONLY" to each page that contains confidential material. If only a portion
17 or portions of the material on a page qualifies for protection, the producing party also must clearly
18 identify the protected portion(s) (e.g., by making appropriate markings in the margins).

19 (b) Testimony given in deposition or in other pretrial proceedings: the parties
20 and any participating non-parties may identify on the record, during the deposition or other pretrial
21 proceeding, all protected testimony, without prejudice to their right to so designate other testimony
22 after reviewing the transcript. Any party or non-party may, within thirty days after receiving the
23 transcript of the deposition or other pretrial proceeding, designate portions of the transcript, or
24 exhibits thereto, as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES
25 ONLY." If a party or non-party desires to protect confidential information at trial, the issue should
26 be addressed during the pre-trial conference.

1 (c) Other tangible items: the producing party must affix in a prominent place
2 on the exterior of the container or containers in which the information or item is stored the word
3 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” If only a
4 portion or portions of the information or item warrant protection, the producing party, to the extent
5 practicable, shall identify the protected portion(s).

6 6.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
7 designate qualified information or items does not, standing alone, waive the designating party’s
8 right to secure protection under this agreement for such material. Upon timely correction of a
9 designation, the receiving party must make reasonable efforts to ensure that the material is treated
10 in accordance with the provisions of this agreement.

11 7. CHALLENGING CONFIDENTIALITY DESIGNATIONS

12 7.1 Timing of Challenges. Any party or non-party may challenge a designation of
13 confidentiality at any time. The challenging party must identify the challenged material(s) by
14 Bates number. Unless a prompt challenge to a designating party’s confidentiality designation is
15 necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens, or a
16 significant disruption or delay of the litigation, a party does not waive its right to challenge a
17 confidentiality designation by electing not to mount a challenge promptly after the original
18 designation is disclosed.

19 7.2 Meet and Confer. The parties must make every attempt to resolve any dispute
20 regarding confidential designations without court involvement. Any motion regarding
21 confidential designations or for a protective order must include a certification, in the motion or in
22 a declaration or affidavit, that the movant has engaged in a good faith meet and confer conference
23 with other affected parties in an effort to resolve the dispute without court action, and that they
24 have identified the material(s) at issue by Bates number. The certification must list the date,
25 manner, and participants to the conference. A good faith effort to confer requires a face-to-face
26 meeting or a telephone conference.

1 7.3 Judicial Intervention. If the parties cannot resolve a challenge without court
 2 intervention, the designating party may file and serve a motion to retain confidentiality under Local
 3 Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of
 4 persuasion in any such motion shall be on the designating party. All parties shall continue to
 5 maintain the material in question as confidential until the court rules on the challenge.

6 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
 7 LITIGATION

8 If a party is served with a subpoena or a court order issued in other litigation that compels
 9 disclosure of any information or items designated in this action as “CONFIDENTIAL” or
 10 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” that party must:

11 (a) promptly notify the designating party in writing and include a copy of the
 12 subpoena or court order;

13 (b) promptly notify in writing the party who caused the subpoena or order to
 14 issue in the other litigation that some or all of the material covered by the subpoena or order is
 15 subject to this agreement. Such notification shall include a copy of this agreement; and

16 (c) cooperate with respect to all reasonable procedures sought to be pursued by
 17 the designating party whose confidential or highly confidential-attorneys’ eyes only material may
 18 be affected.

19 (d) If the designating party timely seeks a protective order, the party served
 20 with the subpoena or order shall not produce any information designated in this matter as
 21 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” absent
 22 court order, unless the party has obtained the designating party’s permission. The designating
 23 party shall bear the burden and expense of seeking protection of its confidential material.

24 9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

25 If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential
 26 or highly confidential-attorneys’ eyes only to any person or in any circumstance not authorized

1 under this agreement, the receiving party must immediately (a) notify in writing the designating
2 party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of
3 the protected material, (c) inform the person or persons to whom unauthorized disclosures were
4 made of all the terms of this agreement, and (d) request that such person or persons execute the
5 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

6 10. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
7 MATERIAL

8 When a producing party gives notice to receiving parties that certain inadvertently
9 produced material is subject to a claim of privilege or other protection, the obligations of the
10 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision
11 is not intended to modify whatever procedure may be established in an e-discovery order or
12 agreement that provides for production without prior privilege review. The parties agree to the
13 entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

14 11. NON TERMINATION AND RETURN OF DOCUMENTS

15 Within 60 days after the termination of this action, including all appeals, each receiving
16 party must return all confidential material to the producing party, including all copies, extracts and
17 summaries thereof. Alternatively, the parties may agree upon appropriate methods of destruction.

18 Notwithstanding this provision, counsel are entitled to retain one archival copy of all
19 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,
20 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work
21 product, even if such materials contain confidential material.

22 The confidentiality obligations imposed by this agreement shall remain in effect until a
23 designating party agrees otherwise in writing or a court orders otherwise.

1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

2 DATED: 11/1/2024

/s/ Alicia Cobb

Attorneys for Plaintiff

4 DATED: 11/1/2024

/s/ Deena Feit

Attorneys for Defendant

7 PURSUANT TO STIPULATION, IT IS SO ORDERED

8 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any
9 documents, electronically stored information (ESI) or information, whether inadvertent or
10 otherwise, in this proceeding shall not, for the purposes of this proceeding or any other federal or
11 state proceeding, constitute a waiver by the producing party of any privilege applicable to those
12 documents, including the attorney-client privilege, attorney work-product protection, or any other
13 privilege or protection recognized by law. This Order shall be interpreted to provide the maximum
14 protection allowed by Fed. R. Evid. 502(d). The provisions of Fed. R. Evid. 502(b) do not apply.
15 Nothing contained herein is intended to or shall serve to limit a party's right to conduct a review
16 of documents, ESI or information (including metadata) for relevance, responsiveness and/or
17 segregation of privileged and/or protected information before production. Information produced
18 in discovery that is protected as privileged or work product shall be immediately returned to the
19 producing party.

21 DATED: November 5, 2024

23 

24 JAMAL N. WHITEHEAD

United States District Court Judge

EXHIBIT AACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
 _____ [print or type full address], declare under penalty of
 perjury that I have read in its entirety and understand the Stipulated Protective Order that was
 issued by the United States District Court for the Western District of Washington on November 5,
 2024, in the case of ***In Re: Amazon Return Policy Litigation, Case No. 2:23-CV-01372-JNW***. I
 agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I
 understand and acknowledge that failure to so comply could expose me to punishment in the nature
 of contempt. I solemnly promise that I will not disclose in any manner any information or item
 that is subject to this Stipulated Protective Order to any person or entity except in strict compliance
 with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the
 Western District of Washington for the purpose of enforcing the terms of this Stipulated Protective
 Order, even if such enforcement proceedings occur after termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____